

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

TONY FISHER,

Plaintiff,

v.

JORDAN HOLLINGSWORTH, et al.,

Defendants.

Civil Action No. 18-16793 (RBK) (AMD)

**OPINION AND ORDER**

**KUGLER, District Judge:**

Plaintiff Tony Fisher, also known as Kellie Rehanna, a prisoner confined at Elkton-Federal Correctional Institution, Elkton, Ohio, seeks to bring this civil action *in forma pauperis*, without prepayment of fees or security, asserting claims pursuant to 28 U.S.C. § 1331. Upon review of Plaintiff's application to proceed *in forma pauperis*, leave to proceed in this Court without prepayment of fees is authorized. *See* 28 U.S.C. § 1915.

Plaintiff also seeks leave to file an amended complaint on a piecemeal basis. Among other things, Plaintiff's amended complaint seeks to replace a Defendant in a number of paragraphs and ostensibly references, but fails to include, many of the numerous exhibits that were in the original complaint. Plaintiff should note that when a person files an amended complaint, it replaces all prior versions of the complaint, and the original complaint no longer performs any function in the case. *E.g.*, *Wilson v. Martone*, No. 11-5337, 2012 WL 715319, at \*5 (D.N.J. Mar. 5, 2012). While Plaintiff's amended complaint may certainly *specifically incorporate* facts and allegations in the original complaint, "the best course of action is to have Plaintiff file" an amended complaint that is complete in itself. *Id.*; *see, e.g.*, *Mendez v. New Jersey State Lottery Comm'n*, No. 11-6932, 2012 WL 13034339, at \*1 (D.N.J. Apr. 11, 2012).

Accordingly, the Court will grant in part Plaintiff's motion to file an amended complaint and direct Plaintiff to submit an all-inclusive amended complaint. This case is subject to *sua sponte* screening by the Court, upon receiving Plaintiff's all-inclusive amended complaint, the Court will screen the new pleading in due course.

IT IS this 15th day of January, 2019, hereby

**ORDERED** that Plaintiff's application to proceed *in forma pauperis* is hereby GRANTED; and it is further

**ORDERED** that Plaintiff's motion to file an amended complaint (ECF No. 5) is hereby GRANTED IN PART; and it is further

**ORDERED** that Plaintiff shall prepare and file a comprehensive proposed amended complaint, complete in all respects, within forty-five (45) days of this Order; and it is further

**ORDERED** that Plaintiff's request for the appointment of counsel (ECF No. 2) is TERMINATED without prejudice pending receipt of Plaintiff's amended pleading; and it is further

**ORDERED** that SUMMONS SHALL NOT ISSUE, at this time, as the Court's *sua sponte* screening has not yet been completed; and it is further

**ORDERED** that the time to serve process under FED. R. CIV. P. 4(m) is hereby extended to the date 90 days after the Court permits the pleading to proceed; and it is further

**ORDERED** that, pursuant to 28 U.S.C. § 1915(b) and for purposes of account deduction only, the Clerk shall serve a copy of this Order by regular mail upon the United States Attorney for the District of New Jersey and the warden of Elkton-Federal Correctional Institution; and it is further

**ORDERED** that Plaintiff is assessed a filing fee of \$350.00 and shall pay the entire filing fee in the manner set forth in this Order pursuant to 28 U.S.C. § 1915(b)(1) and (2), regardless of the outcome of the litigation, meaning that if the Court dismisses the case as a result of its *sua sponte* screening, or Plaintiff's case is otherwise administratively terminated or closed, § 1915 does not suspend installment payments of the filing fee or permit refund to the prisoner of the filing fee, or any part of it, that has already been paid; and it is further

**ORDERED** that pursuant to *Bruce v. Samuels*, 136 S. Ct. 627, 632 (2016), if Plaintiff owes fees for more than one court case, whether to a district or appellate court, under the Prison Litigation Reform Act (PLRA) provision governing the mandatory recoupment of filing fees, Plaintiff's monthly income is subject to a simultaneous, cumulative 20% deduction for each case a court has mandated a deduction under the PLRA; *i.e.*, Plaintiff would be subject to a 40% deduction if there are two such cases, a 60% deduction if there are three such cases, etc., until all fees have been paid in full; and it is further

**ORDERED** that pursuant to 28 U.S.C. § 1915(b)(2), in each month that the amount in Plaintiff's account exceeds \$10.00, the agency having custody of Plaintiff shall assess, deduct from Plaintiff's account, and forward to the Clerk of the Court payment equal to 20% of the preceding month's income credited to Plaintiff's account, in accordance with *Bruce*, until the \$350.00 filing fee is paid. Each payment shall reference the civil docket numbers of the actions to which the payment should be credited; and it is finally

**ORDERED** that the Clerk of the Court shall send a copy of this Opinion and Order to Plaintiff by regular U.S. mail.

s/Robert B. Kugler  
ROBERT B. KUGLER  
United States District Judge